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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.V. et al., Persons Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

JACOB V.,

Defendant and Appellant.

G042662

(Super. Ct. Nos. DP016012 &  
DP016013)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Caryl Lee,  
Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Jeannie Su,  
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minors.

\* \* \*

## **INTRODUCTION**

Jacob V. (Father) is the father of dependent children M.V. (now age 15) and R.V. (now age 10) (collectively, the Children). At the hearing under Welfare and Institutions Code section 366.26, the juvenile court selected legal guardianship as the permanent placement plan and reduced Father's visitation rights from eight hours per week to eight hours every other week. (All further statutory references are to the Welfare and Institutions Code.) Father challenges the portion of the dispositional order reducing his visitation rights. We conclude Father forfeited his challenge to the visitation order by failing to object to it in the juvenile court and therefore affirm.

## **FACTS AND PROCEEDINGS IN THE TRIAL COURT**

The Children were placed in protective custody in September 2007 after M.V. told a school counselor and a social worker that Father sexually abused her, drank heavily, and drove drunk with the Children in the car. The juvenile dependency petition, filed in September 2007, asserted failure to protect (§ 300, subd. (b) [count 1]) and sexual abuse (§ 300, subd. (d) [count 2]). Count 1 alleged Father sexually abused and molested M.V. on several occasions, Father had an unresolved alcohol problem, the Children lived in unsanitary conditions, and, before March 2007, the Children were exposed to acts of domestic violence.

Mother, who is not a party to this appeal, has been incarcerated since March 2007 and has an expected release date in September 2011.

In November 2007, the juvenile court declared the Children dependent children of the court under section 360, subdivision (d) after sustaining the allegations of count 1. The court dismissed count 2. The court removed the Children from parental custody and ordered reunification services. Father's case plan required him to participate in a domestic violence program, sexual abuse counseling for perpetrators, parenting education, substance abuse treatment, and a 12-step program.

Shortly after being detained, the Children were placed in the home of their maternal grandmother, where they remain. Once the Children settled into a routine, they fought with each other less and followed their maternal grandmother's directions with less defiance. Over time, the Children adjusted well to living with their maternal grandmother and excelled academically, socially, and emotionally.

Father had monitored visitation with the Children throughout the dependency period. He initially was given four hours per week of monitored visitation. It was reported that Father consistently attended the monitored visits, but often arrived late. He acted appropriately, and the visits went well. In March 2008, the Orange County Social Services Agency (SSA) increased his visitation time to four hours, twice a week. Father's visits with the Children were characterized as "friendly, affectionate, and with appropriate interactions."

Father participated in much of his case plan, including anger management, parenting classes, and sexual abuse perpetrator counseling. However, by May 2008, he still had not enrolled in a substance abuse program and was unwilling to acknowledge the need to address his problems with alcohol. In June and July 2008, he missed seven of 13 scheduled drug tests. Father was arrested for driving under the influence of alcohol in December 2007 and convicted in June 2008, but did not inform SSA of his arrest and conviction until December 2008.

In May 2009, at the contested 18-month review hearing, the juvenile court terminated reunification services and set a section 366.26 hearing. The court described as "moderate" the progress made toward alleviating or mitigating the causes for detention. The court authorized continuation of conjoint therapy and maintained Father's visitation rights of four hours, twice a week.

By September 2009, Father had participated in 18 sessions of conjoint therapy with M.V. and 24 sessions of conjoint therapy with R.V. Father behaved appropriately in these sessions and made progress toward reaching treatment goals. M.V.

told the therapist she felt safe in the sessions, and R.V. appeared genuinely happy to see Father.

SSA's section 366.26 report, dated September 17, 2009, recommended guardianship as the permanent placement plan and that Father have an eight-hour monitored visit every other week. The report stated: "[The Children] eagerly await their mother's release with the hope that she can work on getting them back, so they can live together. The children report that they enjoy visiting their parents, but they would like to enjoy weekend activities with their friends. Although they enjoy their visits with their father and paternal grandmother, both children report that they find it difficult to talk with their father about the visit times." The report also explained: "Although the father . . . has maintained regular visits with the children, once the contract for the [SSA] provided monitoring ended there was an increase in arguments and disputes over visitation times, frequency, and acknowledging the desires of the children to participate in age[-]appropriate activities with their friends. The father appeared unwilling or unable to address the issues that brought the children to the attention of the [SSA]."

An addendum report noted: "[The maternal grandmother] has been an advocate for the children's ability to participate in normal school and peer functions with the rest of their friends. [The maternal grandmother] has understood the need for regular visits with the father and mother; however, she points out, that with the exception of June 2009, the kids have been attending school during the week, counseling sessions during the week nights, and attending weekend visits for over one and a half years now. 'They haven't had the chance to be kids.'"

Father did not appear at the section 366.26 hearing on September 17, 2009 despite being ordered to do so. His counsel submitted on his behalf. After receiving SSA's section 366.26 report and addendum report, the juvenile court found that termination of parental rights and adoption were not in the Children's best interests, ordered guardianship as the plan of permanent placement, and appointed the maternal

grandmother as legal guardian. The court approved SSA's visitation plan and incorporated it into the order.

### **DISCUSSION**

When the juvenile court orders guardianship as the permanent placement plan, the court must make an order for visitation by parents or guardians unless the court finds by a preponderance of the evidence that visitation would be detrimental to the physical or emotional well-being of the child. (§ 366.26, subd. (c)(4)(C).) The juvenile court has discretion in setting the frequency and lengths of visits. (*In re Shawna M.* (1993) 19 Cal.App.4th 1686, 1690; *In re Megan B.* (1991) 235 Cal.App.3d 942, 953.)

Dependency matters are subject to the rule that a reviewing court will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) "Any other rule would permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware." (*In re Richard K.* (1994) 25 Cal.App.4th 580, 590 [mother forfeited right to contest disposition by submitting on social service agency's recommendation without offering argument or evidence].) Our discretion to excuse forfeiture "should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293.)

Father, through counsel, forfeited his challenge to the visitation order by submitting at the section 366.26 hearing without objecting to the reduction in visitation time. Objecting to the proposed visitation order was particularly important. Without an objection, the juvenile court had no way to know whether Father disagreed with SSA's recommendation and had no opportunity to address Father's concerns and desires.

Father acknowledges he did not object to the visitation order at the section 366.26 hearing. He argues we should excuse his forfeiture because this case presents the legal issue whether the juvenile court, when ordering guardianship as the

permanent placement plan, must allow visitation “as frequent as possible, consistent with the well-being of the child,” which is the standard under section 362.1, subdivision (a)(1)(A) for visitation when reunification services are ordered.

We decline to exercise our discretion to excuse the forfeiture. Even were we to conclude the standard of section 362.1, subdivision (a)(1)(A) applied to this case, we would still have to decide whether the juvenile court abused its discretion under that standard. We cannot say as a matter of law the juvenile court abused its discretion under the standard of section 362.1, subdivision (a)(1)(A); to the contrary, it appears to us the juvenile court’s visitation order met that standard under the circumstances.

#### **DISPOSITION**

The dispositional order is affirmed.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.